

*** The Hon’ble Sri Justice V.V.S.RAO**

+ Writ Petition No.17321 of 2005

% 12.4.2006

£ Kamisetty Narayana Murthy, S/o.Sri Krishna Murthy

...Petitioner

Vs.

\$ The Revenue Divisional Officer, Eluru, West Godavari District

And others

... Respondents

! For the petitioner : Sri C.Raghu

^ For the Respondent No.1 : The learned Government
Pleader for Panchayat Raj

For the Respondent Nos.2 to 9 : Sri Badana Bhaskara Rao

<Gist:

>Head Notes:

? Cases Referred

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17321 OF 2005

.04.2006

Between:

Kamisetty Narayana Murthy, S/o.Sri Krishna Murthy

... Petitioner

AND

The Revenue Divisional Officer, Eluru, West Godavari District

And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17321 OF 2005

ORDER:

The petitioner is Upa Sarpanch of Padala Gram Panchayat of Tadepalligudem Mandal in West Godavari District. He filed the instant writ petition seeking invalidation of the action initiated by the first respondent in scheduling the meeting on 11.8.2005 to consider motion of no confidence moved by the members of the Gram Panchayat. This Court while admitting the writ petition, stayed the announcement of the result by reason of the orders passed on 09.8.2005. The respondents 2 to 9 moved W.V.M.P.No.2386 of 2005 to vacate the interim order. At that stage itself, with the consent of the learned counsel for rival parties, the matter was heard finally and is being disposed of by this order.

The petitioner was elected as member of Gram Panchayat along with nine others in 2001. Later, he was elected as Upa Sarpanch of the village. On 22.6.2005, respondents 2 to 9, who are the ward members of the Gram Panchayat, issued a notice of their intention to move motion expressing no confidence against the petitioner. Pursuant thereto, the first respondent, thereafter, issued a notice in Form No.IV on 04.7.2005 proposing to conduct a meeting on 23.7.2005. The petitioner raised objection to the effect that he did not receive the notice of the meeting. Therefore, the meeting was adjourned. Again, the first respondent issued notice on 25.7.2005 in Form No.IV proposing to conduct meeting on 11.8.2005 to consider the motion to express want of confidence. Aggrieved by the same, the petitioner is before this Court. The petitioner contends that the respondents 2 to 9 issued a notice of intention on 22.6.2005 and, therefore, the meeting ought to have been conducted within thirty (30) days from 22.6.2005. Though the meeting was notified on 23.7.2005, the same was adjourned and meeting was fixed on 11.8.2005, which is beyond 45 days and, therefore, the entire process is vitiated by illegality.

The first respondent filed a counter affidavit opposing the writ petition. Various averments made by the petitioner are not denied. The fact that on 23.7.2005, the meeting was adjourned is also admitted. It is further stated that on 11.8.2005, meeting was conducted at 11.00 a.m. and that ten (10) members of the Gram Panchayat attended the meeting. Voting was conducted by show of hands and eight members supported the motion of no confidence and three others including the Sarpanch negated the motion. The first respondent admits that on 23.7.2005, the meeting was adjourned as the petitioner gave a representation that he did not receive any notice of meeting and that he came to the meeting after knowing the same from the Sarpanch of the Gram Panchayat.

The respondents 2 to 9, who moved application to vacate the interim stay, filed a detailed counter affidavit. They assert that they issued notice of intention to move no

confidence motion on 27.6.2005 and not on 22.6.2005. Thereafter, the first respondent issued notice on 04.7.2005 to all the members proposing to hold meeting on 23.7.2005 at 11.00 a.m. at the office of the Gram Panchayat. The allegation that meeting was not conducted within thirty (30) days is denied. They would contend that as the meeting was scheduled on 23.7.2005 and the notice of intention was issued on 27.6.2005, the same is within time.

Learned Counsel for the petitioner submits that if the meeting is allowed beyond thirty (30) days, the same would be in violation of provisions of Section 245 of A.P. Panchayat Raj Act, 1994 (the Act, for brevity) and the Rules made for regulation of the motion of no confidence issued in G.O.Ms.No.200, dated 28.4.1998 (the Rules, for brevity). Learned Counsel would point out that as per Rule 3 of the Rules, it is mandatory on the part of the first respondent to convene the meeting for consideration of the motion of no confidence "not later than 30 days" from the date on which notice of intention was given by not less than one half of total number of members of the Gram Panchayat. According to the learned Counsel for the petitioner, even if the notice of intention was issued on 27.6.2005, the meeting, which was proposed on 11.8.2005 beyond thirty (30) days and, therefore, the same is illegal. He submits that even if the petitioner had given representation complaining the non-receipt of the notice, the first respondent ought not to have adjourned the meeting, as the same is prohibited by Rule 4 of the Rules.

Learned Assistant Government Pleader for Panchayat Raj and learned Counsel for respondents 2 to 9 submit that as the meeting was initially convened on 23.7.2005, within thirty (30) days from the date of issue of notice of intention on 27.6.2005, the meeting which was proposed to be held on 11.8.2005 as per the notice dated 25.7.2005 is within time and the same has to be treated as continuation of meeting proposed on 23.7.2005.

Section 245 of the Act deals with motion of no confidence in Upa Sarpanch of Gram Panchayat, President of Mandal Parishad and/or Chairperson of Zilla Parishad. As per subsection (1) of Section 245 of the Act, a motion expressing want of confidence has to be issued by a written notice signed by not less than one-half of the total number of members of the Gram Panchayat (against Upa Sarpanch) and action pursuant thereto shall be taken in accordance with the procedure prescribed by the Rules. The Rules have been framed by the Government in G.O.Ms.No.200 dated 28.4.1998. As they are intended to unseat an elected representative by elected representatives, the Rules have to be interpreted strictly. Rule 2 of the Rules deals with the issue of notice of intention by the members and Rule 3 of the Rules provides for the steps to be taken by the concerned officer i.e., RDO. After receiving the notice, the RDO has to convene the meeting within thirty (30) days from the date on which the notice of intention under Rule 2 is served for consideration of the motion of no confidence. As per Rule 4 of the Rules, when once the meeting is convened, the same cannot be adjourned for any reason. However, as per Rule 7 of the Rules, if within one hour after the time appointed for the meeting, there is no quorum as prescribed under Rule 6, the meeting shall stand dissolved and the notice given under Rule 2 shall lapse. That is to say, no further meeting can be held. The relevant portion of Rule 3 and Rules 4 to 9 read as under.

3. The concerned officer specified in rule 2 (hereinafter in this rule referred to as said officer) shall then convene and preside over a meeting for the consideration of the motion at the office of a Gram Panchayat, or at the Mandal Parishad, or at the Zilla Parishad, as the case may be, on a date appointed by him which shall not later than thirty days from the date on which the notice under rule 2 was delivered to him. He shall give to every member of Gram Panchayat, Mandal Parishad or Zilla Parishad as the case may be the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting, of such meeting in Form-IV, in Form-V or in Form –VI annexed to these rules either in English or in Telugu or in Urdu language, whichever is applicable.

4. Save as otherwise provided a meeting convened for the purpose of considering a motion under the said rule shall not be adjourned for any reason.

5. The meeting shall not be convened on a holiday;

6. The quorum for such meeting shall be two-thirds of the total number of members.

EXPLANATION

For the purpose of this rule it is hereby clarified that in the determination of two-thirds of the total number of members under this rule, any fraction arrived at shall be construed as one.

7. If within one hour after the time appointed for the meeting, there is no quorum, the meeting shall stand dissolved and the notice gives under Rule 2 shall lapse.

8. As soon as the meeting convened under the said rule commences, the said officer shall read to the members of the Gram Panchayat or the Mandal Parishad, or as the case may be to the members of the Zilla Parishad present in the meeting, the motion for the consideration of which the meeting has been convened and shall be put it to vote without any debate. The voting shall be by show of hands.

9. The said officer shall not speak on the merits of the motion and he shall not be entitled to vote thereon.

Reading Rules 3 and 4 together, it is reasonable to hold that the requirement of convening the meeting to consider motion of no confidence within thirty (30) days from the date of service of notice of intention is mandatory and for any reason, the meeting cannot be adjourned. For instance, if the quorum is not there, Rules provide that the notice of intention would lapse and the matter comes to an end. Having regard to Rules 8 and 9, which prohibits any debate during the consideration of no confidence, it must also be held that the “concerned” officer is precluded from accepting any representation and adjourning the meeting. Even if a person, who is a member of the local administration, complains that he has not received any notice, the meeting must be held on the day convened, as otherwise, there would be violation of Rules 3, 4 and 7 of the Rules.

In this case, it is admitted case that initially the notice was issued by respondents 2 to 9 on 27.6.2005. Though the learned Counsel for the petitioner initially made an attempt to make this a contentious issue, later he gave up admitting that the notice of intention was given on 27.6.2005. Be that as it is, the first respondent issued notice on 04.7.2005 and convened the meeting on 23.7.2005 at 11.00 a.m. Had the meeting been held on 23.7.2005, it would have been within thirty (30) days, but curiously the meeting was adjourned, which is not permissible under Rule 4 of the Rules. Therefore, the issue of subsequent notice on 25.7.2005 and proposed to hold meeting on 11.8.2005 and if the meeting is allowed to be held on 11.8.2005, it contravenes Rule 3 of the Rules, as it would be beyond thirty (30) days. For this reason, the writ petition succeeds.

In the result, for the above reasons, the writ petition is allowed, declaring the meeting which was proposed on 11.8.2005 as illegal and contrary to Section 245(1) of the Act and Rules 3 and 4 of the Rules relating to motion of no confidence in Upa Sarpanch. There shall be no order as to costs.

(V.V.S.RAO, J)

April , 2006

NOTE:

L.R. Copy be marked.

(By order)

YS